

## APPENDIX A

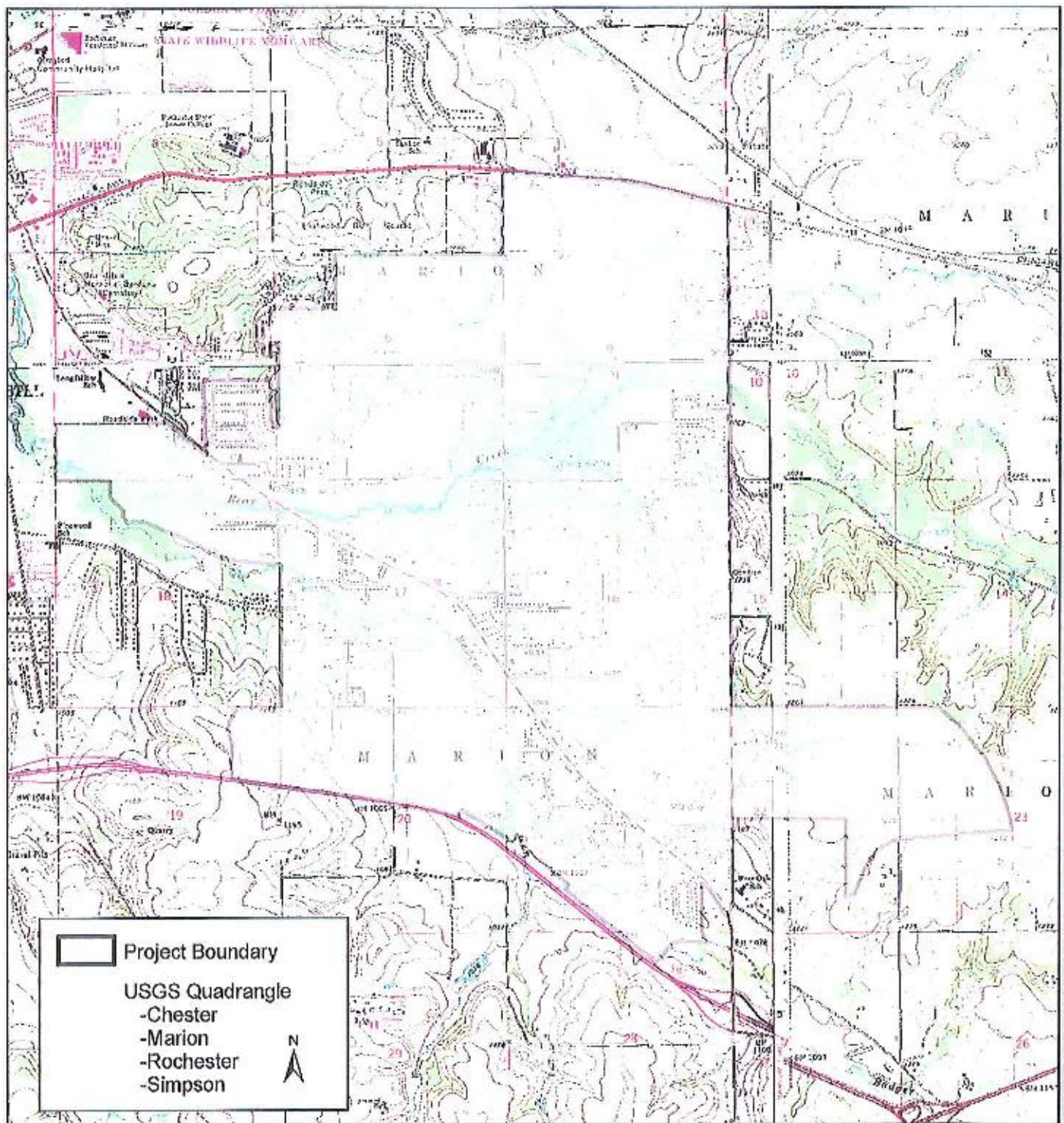


Figure 1

Project Area

January 2007

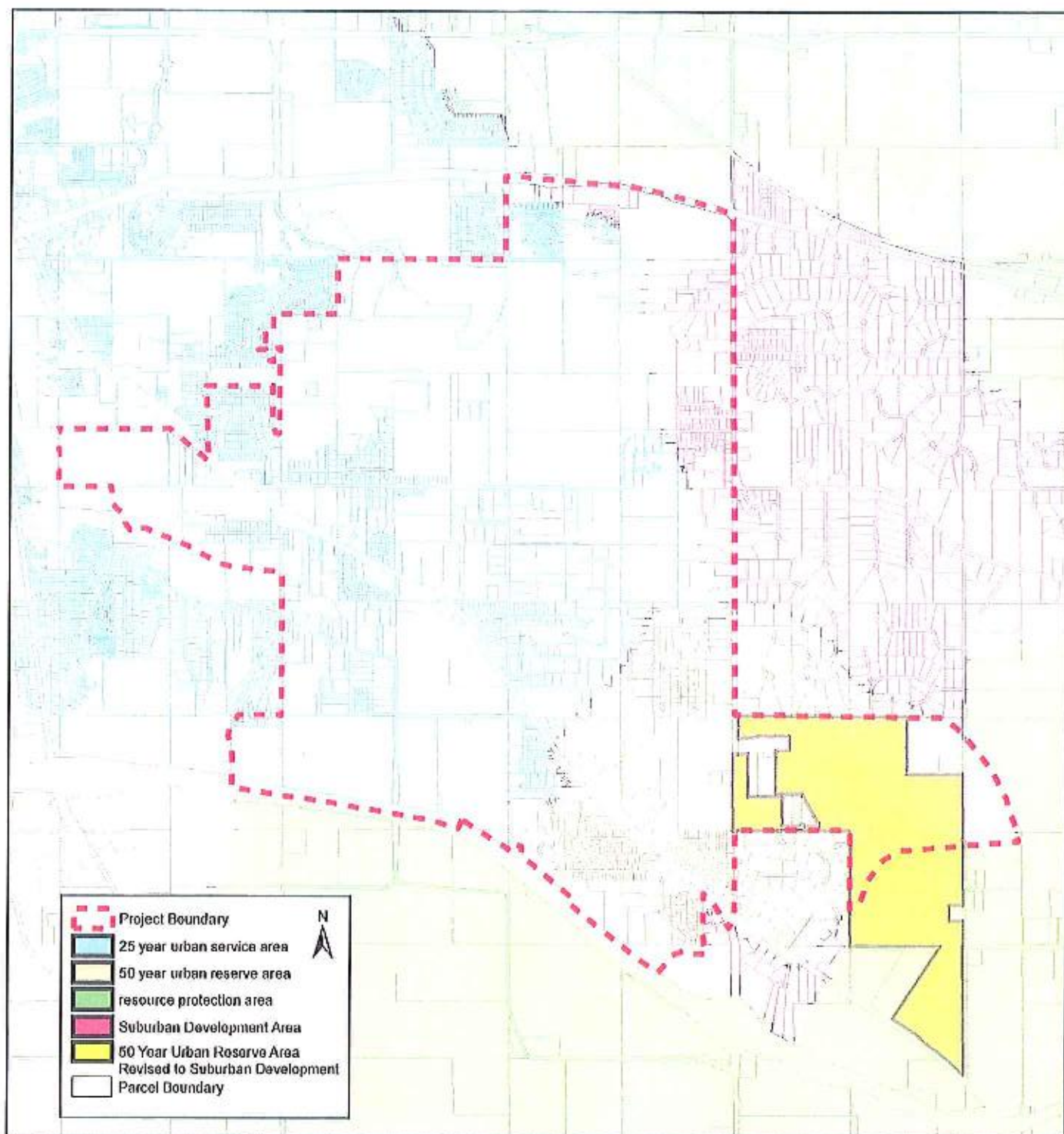
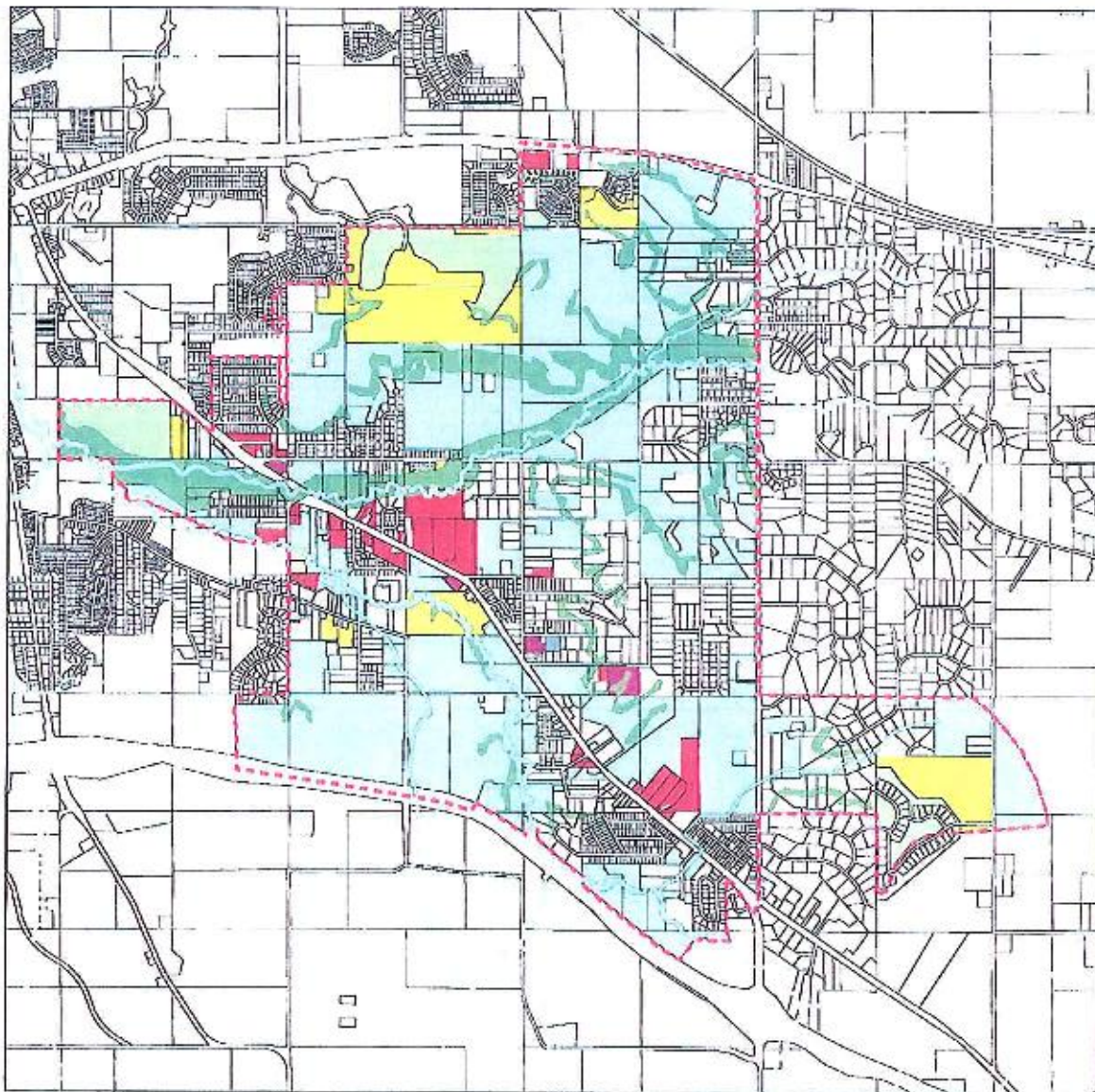


Figure 2



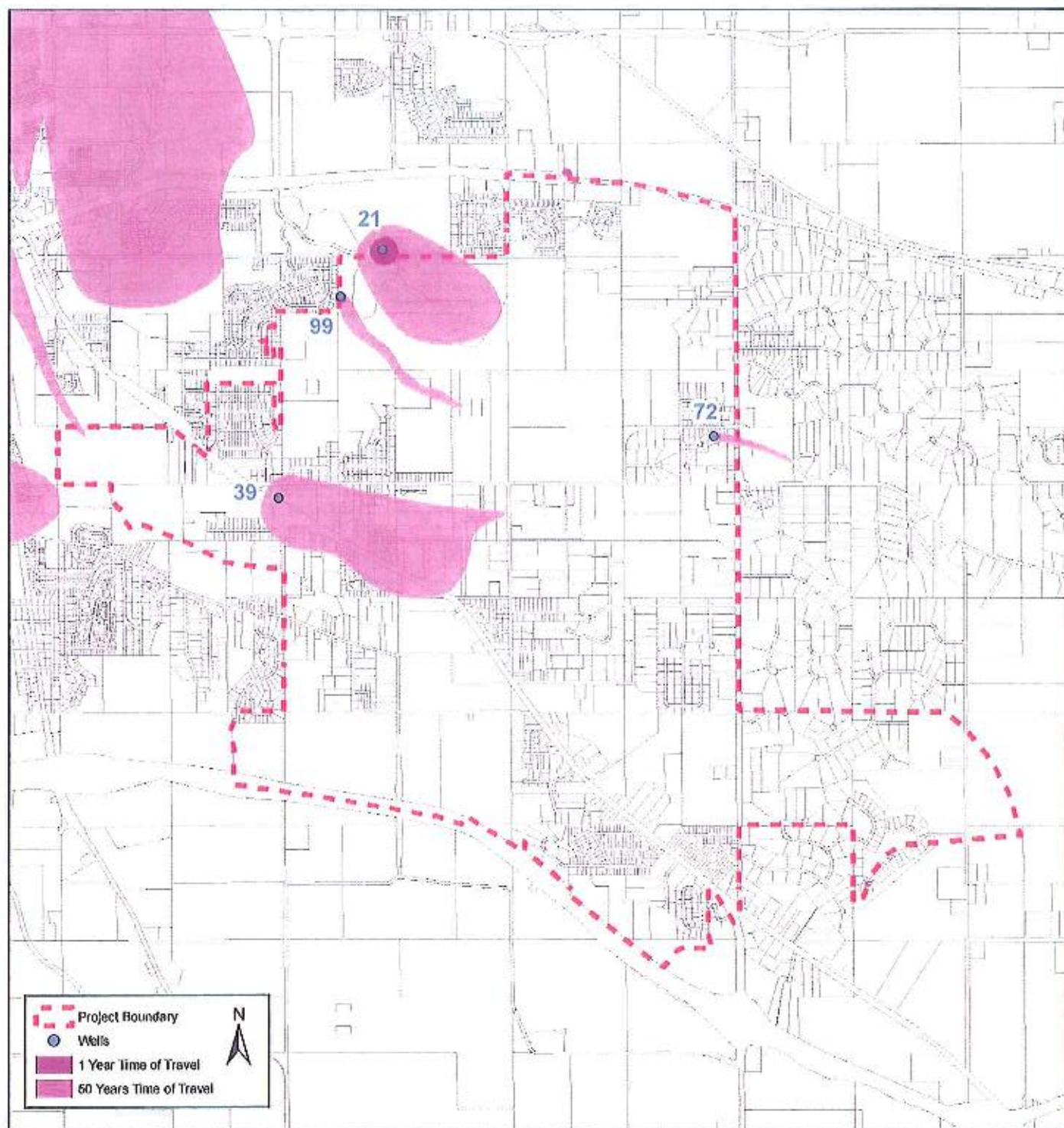


Figure 4

Wellhead Protection Area

January 2007

363 05

RESOLUTION

WHEREAS, the new 20<sup>th</sup> Street S.E., connection proposed for construction between Marion Road and 11<sup>th</sup> Avenue S.E., meets the requirements for a mandatory Environmental Assessment Worksheet as outlined in Minnesota Rule 4410.4300, subp. 1 and subp. 22(A); and

WHEREAS, Minnesota Rules 4410.1300 allows the substitution of an Alternative Urban Areawide Review for an Environmental Assessment Worksheet; and,

WHEREAS, there exists a 2006 Marion Alternative Urban Areawide Review.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Rochester that the City does hereby substitute the 2006 Marion Alternative Urban Areawide Review for the Environmental Assessment Worksheet for the 20<sup>th</sup> Street S.E., connection project between Marion Road and 11<sup>th</sup> Avenue S.E.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF ROCHESTER, MINNESOTA, THIS 15th DAY OF JUNE, 2006.

  
PRESIDENT OF SAID COMMON COUNCIL

ATTEST   
CITY CLERK

APPROVED THIS 16th DAY OF JUNE, 2006.

  
MAYOR OF SAID CITY

(Seal of the City of  
Rochester, Minnesota)

Res05/AdcptLAUAR Sub

## APPENDIX B

**Marion Road Trunk Sanitary Sewer  
Alternative Urban Areawide Review Update #1  
RECORD OF DECISION**

**City of Rochester Public Works Department  
September 15, 2009**

**I. BACKGROUND**

The City of Rochester completed an Alternative Urban Areawide Review (AUAR) in 2002 in conjunction with the extension of sanitary sewer into Marion Township. The 2002 AUAR consisted of two documents: the *Draft Alternative Urban Areawide Review and Mitigation Plan for the Marion Road Trunk Sanitary Sewer Project* (April 2002) and the *Final Alternative Urban Areawide Review and Mitigation Plan for the Marion Road Trunk Sanitary Sewer Project* (May 2002; adopted on 6/17/02 by the Common Council of the City of Rochester, acting as the designated Responsible Governmental Unit); henceforth the 2002 AUAR. An AUAR Update #1 was prepared in 2008, as required by Minnesota Rules 4410.3610, Subp. 7, incorporating the 2002 AUAR by reference. The City of Rochester is the Responsible Governmental Unit for this environmental review process. Notice of availability of the AUAR Update #1 was published in the December 29, 2008 EQB Monitor and the thirty-day public comment period expired on January 28, 2009.

**II. COMMENTS RECEIVED**

Comments on the AUAR Update #1 were received from four agencies, as follows:

1. The Minnesota Pollution Control Agency (January 26, 2009)
2. The Rochester-Olmsted Planning Dept. (December 30, 2008 and January 6, 2009)
3. The Minnesota Department of Transportation (January 7, 2009)
4. The Minnesota Department of Natural Resources (DNR; January 28, 2009)

The City of Rochester addressed DNR's comments by incorporating new language in the AUAR Update #1; however, DNR did not think that the proposed mitigation was sufficient to address their concerns about protecting Wood Turtle habitat. The DNR, therefore, filed an objection on February 23, 2009. Subsequent meetings and negotiations with the DNR resulted in further changes to the AUAR Update #1 such that DNR withdrew its formal objection on September 1, 2009.

Copies of the complete comment submittals, the DNR objection letter, and the DNR withdrawal of the objection are included in Attachment A of this Record of Decision.

### III. RESPONSES TO COMMENTS

Excerpts from the comment letters that need responses are incorporated below.

**The Minnesota Pollution Control Agency offered the following comments:**

**Water Quality: Surface Water Runoff (Item 17b)**

This section should discuss the potential impacts to the adjacent waters including Bear Creek and Willow Creek, which are listed on the MPCA 2008 303(d) Total Maximum Daily Load (TMDL) list of impaired waters due to excess turbidity. In addition, Badger Run has a monitoring site on it as part of a TMDL for turbidity. We recommend you check with the current listing of the impaired waters at the MPCA web site at <http://www.mPCA.state.mn.us/water/tmdl/tmdl-303dlist.html>.

The MPCA National Pollutant Discharge Elimination System/State Disposal System (NPDES/SDS) General Stormwater Permit for Construction Activity (the Permit) was reissued on August 1, 2008. The reissued Permit has new requirements, including modified stabilization time frames and enhanced best management practices (BMPs), for projects located near impaired waters. Due to the turbidity impairments discussed above, this Project will be subject to additional construction related and permanent post-construction stormwater treatment requirements under the Permit. The EA/AUAR Update provides minimal information to indicate how compliance with the Permit will occur other than mentioning the use of existing detention ponds, and the use of bioinfiltration and infiltration. The document indicates that BMPs will be used in accordance with the requirements; however, there is no indication on any of the layout sheets where infiltration areas might be located and if there are any suitable sites available to install the BMPs. It is noted that the final determination of BMP use and their siting will be determined through the permitting process; however, the EA/AUAR Update should include potential locations on the plan layouts to show that suitable sites are available for adequate mitigation of stormwater runoff impacts. If you have any questions regarding stormwater issues, please contact Larry Zdon in our St. Paul office, at 651-757-2839.

**Response:** The AUAR Update #1 was completed prior to the adoption of the new Construction Storm Water (CSW) permit and knowledge of the new requirements that pertain to impaired waters; therefore, those issues were not discussed. Item 17b has been amended to reference the new CSW permit temporary and permanent requirements related to impaired waters. Additionally, City grading standards incorporate the MPCA CSW Permit by reference. This standard, along with state requirements, necessitates the application for, acquisition of, and implementation of the CSW permit. Construction projects initiated after 8/1/08 will be required to prepare Storm Water Pollution Prevention Plans that address the impaired waters and volume control provisions, as required.

It is the obligation of the CSW permittee, not the City, to assess site suitability for volume control BMPs as they relate to specific development proposals to insure compliance with MPCA's CSW permit. Karst geologic conditions present in much of Rochester limit the potential for infiltration in many areas, particularly where drinking water supply management areas need protection. The City maintains comprehensive geographic information system (GIS) data that is available to developers and their engineers to conduct site-specific assessments to determine the potential for infiltration while protecting drinking water resources. The City's GIS data includes the following layers that can assist with this assessment:

- Underlying first encountered bedrock (Minnesota Geologic Survey, Geologic Atlas)
- Depth to bedrock (Minnesota Geologic Survey, Geologic Atlas)
- Aggregate resources (Minnesota Geologic Survey, Geologic Atlas)
- Sinkholes and springs (Minnesota Geologic Survey, Geologic Atlas)
- National Wetland Inventory (US Fish and Wildlife Service)
- Soil Survey Geographic soils data (SSURGO; Natural Resource Conservation Service)
- Locations of municipal water supply wells, with their 1- and 50-year time of travel zones and drinking water supply management areas (Rochester Public Utilities)
- Public waters (Department of Natural Resources)
- Floodplain boundaries (Federal Emergency Management Agency)
- 2008 2-ft contour data (City of Rochester)
- 2009 aerial photography (City of Rochester)

Evaluation of depth to groundwater, floodplain impacts, and other constraints must be made on a site-specific basis.

Compliance with MPCA's CSW permit is obtained via several avenues. City staff review grading plans to insure they meet City and state standards, after which grading permits are issued. City staff complete site inspections to verify compliance with erosion and sediment control standards and undertake enforcement actions, as needed. If grading and drainage violations are observed during ESC inspections, they are referred back to the City's grading engineer for correction or enforcement. MPCA also has an obligation to insure compliance with its own permit program.

**Senior Planners from the Rochester-Olmsted Planning Department (ROPD) offered the following comments:**

- Section 4.0 (p. 2): There have been two Land Use Plan amendments and zone changes for land within the AUAR area since 2002, both along Marion Road. In 2008, the former Preibe horse stables, an area identified for Low Density Residential development, was amended to a Commercial designation. A Land Use Plan amendment and zone change was approved for the Kingsley property along 29<sup>th</sup> St., SE in 2006. The change was from the Low Density Residential designation to an Industrial designation on the Land Use Plan and zoning map.
- Section 6.0 (p. 3): Same comment as above regarding the Land Use Plan and zoning map changes that would apply to the Table I-1 and the last paragraph on the page.

**Response:** The Land Use Plan amendments referenced above did not change the overall hypothetical development scenario for the project area. Therefore, an AUAR Update would not have been triggered and the statements as provided are correct. The revised acres will be noted in Table I-1.

**Further comments from ROPD Senior Planners:**

- Section 9.0 (p. 5): The last paragraph provides comments on the change in the Olmsted County General Land Use Plan in Section 22 and 27 of Marion Township. The paragraph should recognize that this area was considered unlikely to receive public sanitary sewer services due to the probable low density of development that resulted in the relatively high costs to provide services to this subwatershed.
- Section 10.0 (p. 6): The Table I-4 indicates change in cover type that have occurred since 2002. The table should be corrected to reflect current impact in wetlands. One project that has not yet been initiated is the 20<sup>th</sup> St project which is expected to cause a loss of 0.35 acres of Type 1 wetlands. That reference should be removed due to the lack of impact currently. A separate wetland impact occurred in the Colonial Oaks III subdivision in 2004 that is not listed. The table should reflect a 0.16 acre impact to a Type 2 wetland within that subdivision.

- 
- Section 12.0 (p. 8): The last two paragraphs should be clarified somewhat. A suggested change to the paragraph on the Cooperating Technical Partners project could be restated as follows: "In 2006 Olmsted County entered into an agreement with the Minnesota Department of Natural Resources known as the Cooperating Technical Partners (CTP) program. Barr Engineering was hired to develop detailed studies of six streams in Olmsted County including Badger Run. The MNDNR has approved the hydraulic and hydrologic modeling and resulting floodplain designation of this stream."

In the last paragraph the last two sentences should reflect what has occurred in 2008. It could be changed as follows: "On May 22, 2008 the City Council adopted a resolution indicating support of the Conditional Letter of Map Revision (CLOMR) submitted to the Federal Emergency Management Agency. The Federal Emergency Management Agency approved the CLOMR and notified the city on December 18, 2008. A LOMR will also be required and processed after completion of the project."

- 
- Section 14.0 (p. 9): The tributaries to Bear Creek and Badger Run are not a part of the floodplain maps or covered by the shoreland provisions of the city zoning ordinance.
  - Part II (p. 24): Under subpart #5 reference is made to the "...General Development Plan process". Due to possible review of AUAR data at various stages of a development review it may be more accurate to refer to the "development review process (land use plan amendment, zone change, GDP, CUP, or plat)" rather than only the General Development Plan process.
  - Part II (p. 24): Olmsted County is in the process of developing an Open Space element to the General Land Use Plan. Although it is a part of the county comprehensive plan and not a part of the city comprehensive plan, this element may provide additional data, policies, programs, projects, or ideas that may be useful and applicable within the AUAR boundaries.

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I've reviewed the AUAR update and don't have much to add beyond what John has already forwarded to you. I strongly agree with him that it would be appropriate to use the term "development review process" than "General Development Plan". At this point, I don't know how appropriate it would be to make mention of the County's open space planning that I'm working on as I have no idea at this point what form it will end up taking. If it's useful for your purposes to just give it a mention as a work in progress, that would be fine. I also wondered if you wouldn't want to stick in a mention about the "complete streets" project Mitzi has been working on; it's designed to create a more sustainable development pattern. You may want to check with Mitzi as to the status and scope of that project.

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**Response:** The language regarding development density will be added to section 9.0. Table I-4 will be modified to incorporate the referenced wetland impact corrections. Language will be added to Section 12.0 to clarify CTP program, as stated. Further, language will be added to

describe the most recent actions related to this effort. Clarification will be made in Section 14.0 regarding the fact that Bear Creek and Badger Run are not part of the flood plain maps or covered by City shoreland ordinances. The AUAR Update #1 will be modified throughout to say "development review process" instead of "General Development Plan", where appropriate. Information about the County's open space planning process will be added to the document, along with information about the Complete Streets initiative. A description of these two efforts will be added. If new plans, policies, ordinances, or procedures are adopted as a result of those efforts, they will be adhered to as part of the development review process and more details will be provided in the future AUAR Update #2.

**The Minnesota Department of Transportation offered the following comment:**

Minnesota Department of Transportation (Mn/DOT) District 6 staff has reviewed the AUAR and Mitigation Plan Update #1 regarding the Marion Road Trunk Sanitary Sewer Project. No Mn/DOT permits will be necessary for the proposed sanitary sewer work addressed in this AUAR update. Mn/DOT finds this proposal acceptable.

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**Response:** Comment noted. Additionally, storm water management planning done in conjunction with new development within the AUAR area is public information available for Mn/DOT's review so as to evaluate impact on Mn/DOT roadways.

**The Department of Natural Resources offered the following comments:**

Item No. 11 (Fish, wildlife and ecologically sensitive resources) addresses the two calcareous fens within the study area and mentions a requirement for the preparation of a fen management plan. We offer the following clarifying language. Developments with the potential to impact calcareous fens require consultation with the DNR to develop measures for preventing adverse impacts to the fen, including storm water management methods. Depending on the potential and severity of impacts, project sponsors may be required to develop and submit a Fen Management Plan to the DNR and receive approval of the Plan before construction can begin.

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**Response:** Comment noted. Clarifying language has been added to Item 11.

**Further comments from the DNR:**

Wood turtles (*Clemmys insculpta*), a state-listed threatened species, are now known to occur in Badger Run Creek within the AUAR boundary. The DNR Rare Species Guide (wood turtle page attached; also available at <http://www.dnr.state.nm.us/rsg/index.html>) provides more information on wood turtle biology, habitat use, and conservation measures.

The area of the confluence of three streams – Bear Creek, East Fork Willow Creek, and Badger Run – is an extremely important wood turtle habitat complex. Wood turtles require streams, from small tributaries to larger rivers, wooded riparian areas for foraging, and sandy cutbanks, bars or nearby upland areas for nesting. In the Spring of 2004, a wood turtle was found near the intersection of Marion Road and 30<sup>th</sup> Avenue Southeast. Subsequently, the Nongame Program collected telemetry data on wood turtles in the proposed project area during the period 2004-2006 and found that turtles were using both Badger Run and Bear Creek. The fact that we found three new turtles with minimal effort in the telemetry project is a good indication that there is a larger population in this area. Physical examinations of the tracked turtles identified gravid females. This and the presence of reproductive-age males suggest that a reproducing population may exist in the Badger Run – Bear Creek watershed. We were not able to determine the nesting

locations for these turtles, but based on other data we have collected for wood turtles in southeastern Minnesota, they are likely using sandy banks and sandy expanses in close proximity to Badger Run and Bear Creeks. We have also had some unconfirmed reports of wood turtles on Willow Creek, which will be crossed by the proposed roadway.

Badger Run, Bear Creek and Willow Creek are all smaller tributaries of the Zumbro River, which is also known to support wood turtles. We suspect that younger turtles frequently use these tributaries, allowing them to mature and become part of the reproductive population. Wood turtles also use the surrounding area as foraging and wintering habitat. For example, we have data that indicates that the area immediately west of Kepp Park, although not significant from a plant perspective, is used extensively by wood turtles for summer foraging. This area is by itself not sufficient to sustain a population of wood turtles in this area. Considering that there are so few populations of wood turtles remaining in all of southeastern Minnesota, this population is very important and should be protected.

**Initial Response:** Item 11 has been modified to include the information provided about the presence of and protection for the Wood Turtle. This information has been disseminated to Planning, Park and Recreation, and Public Works Department staff involved in planning and development review processes.

As it relates to the extension of 20<sup>th</sup> Street SE, the wooded areas along Bear Creek and Willow Creek will be left intact, except for the 190-foot construction corridor, leaving a significant buffer that varies in width from approximately 240 to 420 feet wide. Stream/woodland corridor connectivity will be retained by virtue of the long, single-span bridges across Willow and Bear Creeks that are needed to minimize floodplain impacts. The wooded portion of Kepp Park is not planned for development, leaving from 300 to 450 feet of wooded buffer between the streams and the active area of the park. The wooded area is the steepest area of the property, with elevation changes of 6 to 8 feet from the stream to the future recreational areas. The wooded buffer area is also underlain by two loamy sand units (283B and 495) and, given its closer proximity to Bear Creek, should provide ample, suitable nesting habitat and foraging area. As part of the 20<sup>th</sup> Street SE Connection Project, the City will be purchasing property for road and drainage easements and Section 6(f) parkland mitigation from a 14.8-acre parcel of land that contains the confluence of Badger Run and Bear Creek. If the property owner is willing to negotiate a reasonable purchase price, the City will consider purchasing the entire parcel. If this is accomplished, then the portions of the parcel not needed for easements and parkland will be retained as public open space, precluding the potential for urban development in this area and providing additional habitat connectivity between Kepp Park, Bear Creek Park and a 15-acre, non-park, City-owned, open space parcel.

A small animal barrier fence along the future 20<sup>th</sup> Street SE will be installed during construction of this street connection to help prevent road mortality for the Wood Turtle and other small animals.

**Additional Mitigation in Response to DNR's Objection:**

Utilizing guidance provided by the DNR, the small animal barrier fence will be constructed as a 4-foot high chain link fence and installed along the south side of the 20th Street SE Connection Project.

The City will remove trees and brush in the northwest portion of Kepp Park to create a 3.25 acre area that is conducive to Wood Turtle nesting. This area will be seeded with appropriate native grasses and maintained as an open area over time.

#### **IV. FINDINGS OF FACT**

- a. The Marion Trunk Sanitary Sewer Alternative Urban Areawide Review Update #1 was prepared to assess whether development impacts allowed since 2002 and mitigation measures employed to offset those impacts have followed the hypothetical development scenario and Mitigation Plan set forth in the 2002 AUAR documents.
- b. New development within the nearly 4,600-acre Project Area has resulted in the conversion or loss of vacant/agricultural/undeveloped area into low density residential, commercial and industrial, park and open space, and transportation land uses according to the hypothetical development scenario with the expected changes in cover type.
- c. The 2002 Mitigation Plan has been implemented or supplanted with equal or better measures since 2002.
- d. The AUAR Update #1 has incorporated responses to the comments received during the open comment period, as well as the DNR concerns resulting in the AUAR objection.
- e. No comments were received to suggest that further environmental review is warranted.
- f. The City finds that development since 2002 has been consistent with the 2002 AUAR and existing City, state, and federal requirements will continue to provide for future development according to the adopted hypothetical development scenario; therefore, no significant environmental impacts are expected.

#### **V. CONCLUSION**

The City of Rochester finds that the Marion Trunk Sanitary Sewer Alternative Urban Areawide Review Update #1 confirms that development since 2002 continues to conform with the Hypothetical Development Scenario and that the elements of the Mitigation Plan have been met such that a Negative Declaration on the Need for an Environmental Impact Statement is warranted.

## ATTACHMENT A

## Huberty, Barbara

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From: Goslee Sandi [goslee.sandi@CO.OLMSTED MN US]  
Sent: Tuesday, January 06, 2009 11:58 AM  
To: Huberty, Barbara  
Subject: Marion AUAR

Barb,

I've reviewed the AUAR update and don't have much to add beyond what John has already forwarded to you. I strongly agree with him that it would be appropriate to use the term "development review process" than "General Development Plan". At this point, I don't know how appropriate it would be to make mention of the County's open space planning that I'm working on as I have no idea at this point what form it will end up taking. If it's useful for your purposes to just give it a mention as a work in progress, that would be fine. I also wondered if you wouldn't want to stick in a mention about the "complete streets" project Mitzi has been working on; it's designed to create a more sustainable development pattern. You may want to check with Mitzi as to the status and scope of that project.

Great work!

*Sandi Goslee*

Sandi Goslee  
Senior Planner  
Rochester-Olmsted Planning Department  
2122 Campus Drive SE, Suite 100  
Rochester, MN 55904  
Phone: 507.328.7133 Fax: 507.328.7958  
E-mail: [goslee.sandi@co.olmsted.mn.us](mailto:goslee.sandi@co.olmsted.mn.us)  
Please note the new phone number!

*Rec'd 1/15/09*

TO: BARBARA HUBERTY, ENVIRONMENTAL AND REGULATORY AFFAIRS  
COORDINATOR

FROM: JOHN HARFORD, SENIOR PLANNER

DATE: DECEMBER 30, 2008

RE: RESPONSE TO AUAR AND MITIGATION PLAN UPDATE #1

Based on the Update #1 dated April , 2008 I have the following comments. The comments are listed by section number and page.

- Section 4.0 (p. 2): There have been two Land Use Plan amendments and zone changes for land within the AUAR area since 2002, both along Marion Road. In 2008, the former Preibe horse stables, an area identified for Low Donsity Residential development, was amended to a Commercial designation. A Land Use Plan amendment and zone change was approved for the Kingsley property along 29<sup>th</sup> St., SE in 2006. The change was from the Low Density Residential designation to an Industrial designation on the Land Use Plan and zoning map.
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## Minnesota Pollution Control Agency

520 Lafayette Road North | St. Paul, MN 55155-4194 | 651-295-6300 | 800 657-3854 | 651-282-5332 TTY | [www.pca.state.mn.us](http://www.pca.state.mn.us)

January 26, 2009

Ms. Barbara J. Huberty  
Environmental and Regulatory Affairs Coordinator  
City of Rochester Public Works Department  
201 4<sup>th</sup> Street SE, Room 108  
Rochester, MN 55904

Re: 20<sup>th</sup> Street SE Connection Environmental Assessment/  
Alternative Urban Areawide Review Update

Dear Ms. Huberty:

Thank you for the opportunity to review and comment on the Environmental Assessment/ Alternative Urban Areawide Review Update (EA/AUAR Update) for the 20<sup>th</sup> Street SE Connection Project in Rochester, Minnesota. Regarding matters for which the Minnesota Pollution Control Agency (MPCA) has regulatory responsibility and other interests, the MPCA staff has the following comments for your consideration.

**Water Quality: Surface Water Runoff (Item 17b)**

This section should discuss the potential impacts to the adjacent waters including Bear Creek and Willow Creek, which are listed on the MPCA 2008 303(d) Total Maximum Daily Load (TMDL) list of impaired waters due to excess turbidity. In addition, Badger Run has a monitoring site on it as part of a TMDL for turbidity. We recommend you check with the current listing of the impaired waters at the MPCA web site at <http://www.pca.state.mn.us/water/tmdl/tmdl-303dlist.html>.

The MPCA National Pollutant Discharge Elimination System/State Disposal System (NPDES/SDS) General Stormwater Permit for Construction Activity (the Permit) was reissued on August 1, 2008. The reissued Permit has new requirements, including modified stabilization time frames and enhanced best management practices (BMPs), for projects located near impaired waters. Due to the turbidity impairments discussed above, this Project will be subject to additional construction related and permanent post-construction stormwater treatment requirements under the Permit. The EA/AUAR Update provides minimal information to indicate how compliance with the Permit will occur other than mentioning the use of existing detention ponds, and the use of bioinfiltration and infiltration. The document indicates that BMPs will be used in accordance with the requirements; however, there is no indication on any of the layout sheets where infiltration areas might be located and if there are any suitable sites available to install the BMPs. It is noted that the final determination of BMP use and their siting will be determined through the permitting process; however, the EA/AUAR Update should include potential locations on the plan layouts to show that suitable sites are available for adequate mitigation of stormwater runoff impacts. If you have any questions regarding stormwater issues, please contact Larry Zdon in our St. Paul office, at 651-757-2839.

Ms. Barbara J. Huberty  
January 26, 2009  
Page 2

Also of concern are the bridges to be constructed over Bear Creek and Willow Creek as part of the proposed Project. All measures should be taken to ensure that the bridges are constructed without detriment to the streams and any encroachment onto the floodplain should be carefully considered.

We appreciate the opportunity to review this project and look forward to receiving your responses to our comments and notice of decision on the need for an Environmental Impact Statement. Please be aware that this letter does not constitute approval by the MPCA of any or all elements of the project for the purpose of pending or future permit action(s) by the MPCA. Ultimately, it is the responsibility of the project proposer to secure any required permits and to comply with any requisite permit conditions. If you have any additional questions concerning our review of this EA/AUAR Update, please contact me at 651-757-2328 or Karen Kromar at 651-757-2508.

Sincerely,



Jessica Ebertz  
Planner Principal  
Environmental Review and Operations Section  
Regional Division

JF:mbo

cc: Larry Zdon, MPCA, St. Paul  
Craig Affeldt, MPCA, St. Paul  
Karen Kromar, MPCA, St. Paul  
Shaina Keseley, MPCA, Rochester

# Minnesota Department of Natural Resources

Central Region  
1200 Warner Road  
Saint Paul, Minnesota 55106  
(851) 259-5767



January 28, 2009

Barbara J. Huberty  
City of Rochester Public Works Department  
201 4th Street Southeast, Room 108  
Rochester, Minnesota 55904

RE: Marion Road Trunk Sanitary Sewer Project  
Alternative Urban Arcawide Review (AUAR) and Mitigation Plan Update #1

Dear Ms. Huberty:

The Department of Natural Resources (DNR) Central Region has reviewed the update that the City of Rochester has prepared for the Marion Road Trunk Sanitary Sewer Project AUAR. We offer the following comments for your consideration.

Item No. 11 (Fish, wildlife and ecologically sensitive resources) addresses the two calcareous fens within the study area and mentions a requirement for the preparation of a fen management plan. We offer the following clarifying language. Developments with the potential to impact calcareous fens require consultation with the DNR to develop measures for preventing adverse impacts to the fen, including storm water management methods. Depending on the potential and severity of impacts, project sponsors may be required to develop and submit a Fen Management Plan to the DNR and receive approval of the Plan before construction can begin.

Wood turtles (*Emydoidea blandingii*), a state-listed threatened species, are now known to occur in Badger Run Creek within the AUAR boundary. The DNR Rare Species Guide (wood turtle page attached; also available at <http://www.dnr.state.mn.us/rsg/index.html>) provides more information on wood turtle biology, habitat use, and conservation measures.

The area of the confluence of three streams – Bear Creek, East Fork Willow Creek, and Badger Run – is an extremely important wood turtle habitat complex. Wood turtles require streams, from small tributaries to larger rivers, wooded riparian areas for foraging, and sandy cutbanks, bars or nearby upland areas for nesting. In the Spring of 2004, a wood turtle was found near the intersection of Marion Road and 30<sup>th</sup> Avenue Southeast. Subsequently, the Nongame Program collected telemetry data on wood turtles in the proposed project area during the period 2004-2006 and found that turtles were using both Badger Run and Bear Creek. The fact that we found three new turtles with minimal effort in the telemetry project is a good indication that there is a larger population in this area. Physical examinations of the tracked turtles identified gravid females. This and the presence of reproductive-age males suggest that a reproducing population may exist in the Badger Run – Bear Creek watershed. We were not able to determine the nesting

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locations for these turtles, but based on other data we have collected for wood turtles in southeastern Minnesota, they are likely using sandy banks and sandy expanses in close proximity to Badger Run and Bear Creeks. We have also had some unconfirmed reports of wood turtles on Willow Creek, which will be crossed by the proposed roadway.

Badger Run, Bear Creek and Willow Creek are all smaller tributaries of the Zumbro River, which is also known to support wood turtles. We suspect that younger turtles frequently use these tributaries, allowing them to mature and become part of the reproductive population. Wood turtles also use the surrounding area as foraging and wintering habitat. For example, we have data that indicates that the area immediately west of Kepp Park, although not significant from a plant perspective, is used extensively by wood turtles for summer foraging. This area is by itself not sufficient to sustain a population of wood turtles in this area. Considering that there are so few populations of wood turtles remaining in all of southeastern Minnesota, this population is very important and should be protected.

The DNR is providing similar comments on the 20<sup>th</sup> Street SE Connection, a project within the AUAR study area. Thank you for the opportunity to review this update. If you have any questions about these comments, please call Wayne Barstad, regional environmental assessment ecologist, at 651-259-5738.

Sincerely,



Dirk Peterson  
Acting Regional Director

C: Steve Colvin, Lisa Joyal, Don Nelson, Jaime Edwards  
Kevin Stauffer, Corey Hanson, Wayne Barstad, REAT (DNR)  
Nick Rowse (USFWS)  
Jon Larsen (EQB)  
RO09 Marion Road Sanitary.doc  
ERDB#20020871-0003

**MN Status:**

threatened

**Federal Status:**

none

**CITES:**

yes

**USFS:**

yes

**Group:**

reptile

**Class:**

Chelonia

**Order:**

Cryptodeira

**Family:**

Emyridae

**Habitats:**

Fire Dependent  
Forest, Mesic  
Hardwood Forest,  
Upland Prairie,  
River Shore, Wet  
Forest, Small Rivers  
and Streams,  
Medium Rivers and  
Streams, Savanna

**Synonyms**

*Glyptemys insculpta*

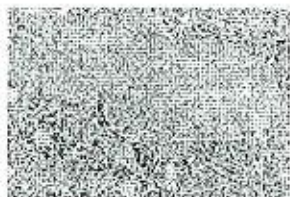
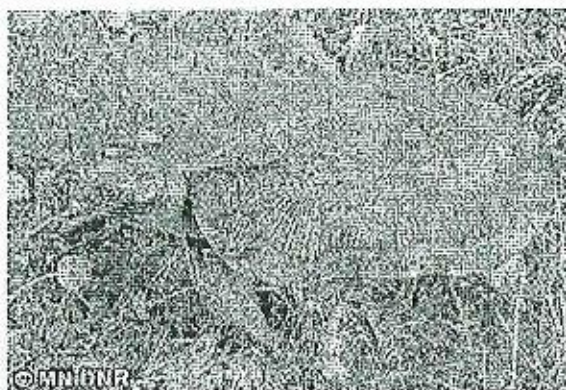
**Basis for Listing**

The wood turtle is on the western edge of its range in Minnesota. It occurs north into Ontario, east to Nova Scotia, and south from northern Iowa to northern Virginia. Because of its dependence on forested riverine systems and well-drained soils, the wood turtle was probably never uniformly distributed in the Upper Great Lakes Region, but was locally abundant in areas with optimal habitat. Throughout its range, many populations have become impacted or extirpated by human activities. In Minnesota, factors contributing to its decline include the loss or fragmentation of riverine forests related to agriculture, timber harvest, road construction, and development; siltation of streams caused by excessive runoff; and flooding of nesting areas. Prime wood turtle habitat is also attractive to recreationists, leading to increased collection and road kills. In addition, human activity attracts predators into areas because of trash left behind. An increase in predators can in turn impact wood turtle populations, with predators digging up nests or eating young turtles. All of these problems are compounded by the wood turtle's low reproductive potential, resulting in few juveniles recruited into the population. The wood turtle was designated a threatened species in Minnesota in 1984.

Please note that the accepted scientific name for this species is now *Glyptemys insculpta*. This change will be reflected in the forthcoming revisions to Minnesota's official list of endangered, threatened, and special concern species.

**Description**

The carapace (upper shell) of an adult wood turtle averages 14-20 cm (5.5-8 in.) in length (Oldfield and Moriarty 1994) and is comprised of individual plate-like scales or scutes that have concentric grooves that resemble growth-rings on a tree. Yellowish-colored skin on the limbs and underside of the neck is



typical of Minnesota wood turtles, but the color can range from yellowish-orange to red in turtles further east. Adult male wood turtles can be distinguished from females by their larger, wider head; longer, thicker tail; and concave shape of their plastron (lower shell).

#### Habitat

The wood turtle is largely aquatic, preferring small- to medium-sized, fast-moving rivers and streams with adjacent deciduous and coniferous forests. The substrates of wood turtle streams typically consist of sand or gravel. Wood turtles will occupy adjacent alder thickets, forest, and grassland habitat for basking and foraging, typically staying within 1/4 mile of the river or stream. In southeast Minnesota, wood turtles are often found foraging in agricultural fields along rivers. Sandy, sparsely vegetated areas that are not prone to flooding and have ample exposure to direct sunlight provide important nesting sites.

#### Biology / Life History

Wood turtles overwinter in rivers or streams where turtles may gather in bank undercuts or near log-jams. They become active by late April, basking on logs or riverbanks on sunny days. Breeding is most frequent in the spring and fall. In late May or June, gravid females dig nests in exposed sandbars, cut-banks, or other open, well-drained areas and lay 4-18 eggs (Ernst et al. 1994). Hatchlings generally emerge in late August or September. Wood turtle nests are destroyed by a variety of predators including raccoons (*Procyon lotor*), skunks, and foxes. Hatchling turtles traveling from their nest to water often fall prey to birds and other predators. Fish and snapping turtles (*Chelydra serpentina*) eat many hatchlings that manage to reach water (Harding and Bloomer 1979). Females lay only 1 clutch of eggs per year, and may not nest every year (Ross et al. 1991). The wood turtle is very long-lived, maturing between the ages of 14 and 18 years (Farrell and Graham 1991; Brooks et al. 1992). During the summer, the wood turtle will forage on land, typically staying within 150 m (492 ft.) of a river and occupying a home range of less than 3 ha (7.4 ac.) (Buech 1994; Ernst et al. 1994). The use of upland habitat varies widely among individual turtles (Ernst et al. 1994). The wooded floodplains and uplands adjacent to wood turtle streams supply a variety of foods, including berries, succulent leaves, mushrooms, insects, and earthworms.

#### Conservation / Management

Habitat degradation and destruction, illegal collecting for the pet trade, and increased mortality from road kills and predation have impacted wood turtle populations throughout their range. This late maturing species has low recruitment potential and is highly vulnerable to the loss of any individuals from the population. Conservation efforts should include identification of viable wood turtle populations and the protection of upland foraging habitat and nesting sites. Activities affecting water quality and water level management must also be addressed.

Preservation of high-quality wood turtle habitat is dependent upon reasonable floodplain conservation techniques and zoning restrictions, including maintaining water quality; controlling sedimentation; restricting pesticide use near waterways; enforcing minimum set-back requirements and stream-side buffer zones; and use of best management practices for timber harvest, livestock grazing, and agriculture. Damming and channelization change the substrate and flow characteristics of streams, making them unsuitable for wood turtles. Certain fisheries management activities, such as streambank stabilization and the digging of sand traps in trout streams, can also negatively alter wood turtle

habitat (Harding 1991). Woody debris in rivers provides turtles with cover and basking sites and should be retained, when possible. Recreationists can impact wood turtle populations through increased collecting and by attracting predators to food and trash discarded at picnic areas. Trash left on sandbars and islands where turtles nest can attract skunks and raccoons that may also dig up and destroy turtle nests. Limiting recreational use of streams in prime wood turtle habitat may be necessary. Lastly, wood turtles are susceptible to being killed by farm machinery while foraging in agricultural fields.

#### Conservation Efforts in Minnesota

Several conservation efforts have been undertaken to determine the distribution and abundance of wood turtles in Minnesota. Surveys have been conducted by the Minnesota DNR County Biological Survey and Nongame Wildlife Program, and by the U.S. Forest Service to determine the extent of wood turtle distribution in Minnesota and to locate nesting sites. The U.S. Forest Service has conducted research on movements, habitat use of adult turtles, and nesting success. The Nongame Wildlife Program has conducted research on movements and habitat use of adult and juvenile turtles. Wood turtle management recommendations have been developed by the DNR for natural resource managers working in areas with known wood turtle populations.

#### References

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- Harding, J. H. 1991. A twenty-year Wood Turtle study in Michigan: implications for conservation. Pages 31-35 in K. R. Beaman, F. Caporaso, S. McKeown, and M. D. Graff, editors. Proceedings of the first international symposium on turtles and tortoises: conservation and captive husbandry. Chapman University, Orange, California.
- Harding, J. H., and T. J. Bloomer. 1979. The Wood Turtle, *Clemmys insculpta* . . . a natural history. Bulletin of the New York Herpetological Society 15(1):9-26.
- Oldfield, B., and J. J. Moriarty. 1994. Amphibians and reptiles native to Minnesota. University of Minnesota Press, Minneapolis, Minnesota. 237 pp.
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Minnesota Department of Transportation

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2900 48<sup>th</sup> Street N.W.  
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February 24, 2009

Barbara J. Huberty, Environmental and Regulatory Affairs Coordinator  
City of Rochester Public Works Department  
201 4<sup>th</sup> Street SE, Room 108  
Rochester, MN 55904

**RE: Marion Road Trunk Sanitary Sewer Alternative Urban Areawide Review  
(AUAR) and Mitigation Plan Final Update #1  
US 14 CS 5503**

Dear Ms. Huberty:

Minnesota Department of Transportation (Mn/DOT) District 6 staff has reviewed Final Update #1 for Marion Road Trunk Sanitary Sewer Project. There do not appear to be any Mn/DOT permits necessary for the proposed sanitary sewer work addressed in the AUAR Final Update. As development occurs, Mn/DOT would like the opportunity to review the Storm Water Management Plans to ensure there will be no impacts to Mn/DOT roadways.

Thank you for keeping Mn/DOT informed. If there are any questions, you may contact Peter Waskiw, Principal Planner, at (507) 286-7680 or Debbie Persoon-Bement, Transportation Specialist at (507) 286-7598.

Sincerely,

A handwritten signature in cursive script that reads "Chris Moates".

Chris Moates  
District 6 Planning Director

cc: Greg Paulson, Kjersti Anderson, Jai Kalsy, Nancy Klema, Thomas Streiff,  
Craig Hansen, Peter Waskiw, Debbie Persoon-Bement, File  
DOCS-11677528

# Minnesota Department of Natural Resources

Division of Ecological Resources  
500 Lafayette Rd.  
Saint Paul, Minnesota 55155-4025  
(651) 259-5100



February 23, 2009

Barbara J. Huberty  
City of Rochester Public Works Department  
201 4th Street Southeast, Room 108  
Rochester, Minnesota 55904

RE: Marion Road Trunk Sanitary Sewer Project  
Alternative Urban Arcawide Review (AUAR) and Mitigation Plan Update #1  
Filing of Objection

Dear Ms. Huberty:

The Department of Natural Resources (DNR) Central Region has reviewed the final version of the Update that the City of Rochester has prepared for the Marion Road Trunk Sanitary Sewer Project AUAR. The DNR objects to the Update and its adoption pursuant to Minnesota Rules Part 4410.3610, subpart 5.D. The DNR is also filing a copy of this letter with the Environmental Quality Board (EQB) staff.

The DNR provided comments on the April 2008 version of the Update. Thank you for providing responses to our comments and incorporating the information about the two calcareous fens in the AUAR study area. By clarifying the requirements that developers consult with the DNR and, if necessary, submit a Fen Management Plan, the Update establishes an effective and acceptable level of mitigation for those outstanding resources.

The DNR objects on the basis that the Update does not provide for sufficient mitigation to protect the Wood turtle population that inhabits the area through which the City proposes to construct the 20<sup>th</sup> Street SE Connection. As stated in the January 28, 2009 DNR letter, the area of the confluence of three streams – Bear Creek, East Fork Willow Creek, and Badger Run – is an extremely important wood turtle habitat complex. Wood turtles require streams, from small tributaries to larger rivers, wooded riparian areas for foraging, and sandy cutbanks, bars or nearby upland areas for nesting. Wood turtles are likely using sandy banks and sandy expanses in close proximity to Badger Run and Bear Creeks, and possibly Willow Creek, which will be crossed by the proposed roadway. Badger Run, Bear Creek and Willow Creek are all smaller tributaries of the Zumbro River, which is also known to support wood turtles. We suspect that younger turtles frequently use these tributaries, allowing them to mature and become part of the reproductive population. Wood turtles also use the surrounding area as foraging and wintering habitat. The area immediately west and south of Kepp Park, although not significant from a plant perspective, is used extensively by wood turtles for summer foraging. This area is by itself not sufficient to sustain a population of wood turtles in this area. Considering that there are so

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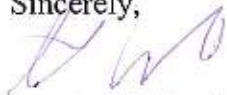
few populations of wood turtles remaining in all of southeastern Minnesota, this population is very important and should be protected.

The revised Update incorporates the new information regarding Wood turtles in the area and states that the extension of 20<sup>th</sup> Street SE will leave intact a corridor and buffer along Bear Creek and Willow Creek and will leave undeveloped the wooded portion of Kepp Park. The Update further states that the City will purchase property in the confluence of Badger Run and Bear Creek. The City would retain this property as public open space. The DNR contends, however, that development within the critical habitat complex will diminish one or more of the habitat functions, each of which is crucial to the Wood turtles' existence in the area. For example, even if turtles can continue to move from the three streams to the Zumbro River, the loss of sandy upland nesting habitat in Kepp Park will cause the population to decline.

This area is important because of the confluence of three waterways and the surrounding habitat. The land in the project area is the only relatively large block of habitat remaining in this watershed. It provides riverine habitat surrounded by woodlands with some sandy uplands. This habitat complex provides the wood turtle with all the components necessary for its life cycle. The headwaters of Badger Run and Willow Creek are not far from this area, so there is little room for the turtles to move further upstream. In addition, a low-head dam just north of the project area could pose a significant travel barrier. Therefore, the habitat complex in the project area is the only continuous habitat without significant barriers that would further isolate this population of wood turtles. If this habitat is fragmented further and large components, such as sandy nesting areas, are permanently removed, this population likely will not survive. We strongly recommend that the City consult further with the DNR and develop specific strategies for conserving the Wood turtle habitat.

Minnesota Rules Part 4410.3610, subpart 5.F., requires you to consult with the DNR within five days on issues raised in this objection. Please contact me with any questions or to schedule a meeting with appropriate DNR staff to discuss the issues outlined above.

Sincerely,



Steven Colvin, Supervisor  
Environmental Review Unit  
Division of Ecological Resources  
(651) 259-5082

- c: Greg Downing, EQB Director of Environmental Review  
Steven Hirsch, DNR Ecological Resources Director  
Dirk Peterson, DNR Acting Regional Director  
Bonita Eliason, DNR Ecological Resources Regional Manager  
Wayne Barstad, Regional Environmental Assessment Ecologist

Minnesota Department of Natural Resources  
500 Lafayette Road • St. Paul, MN • 55155-40



September 1, 2009

Mr. Gene Hugoson, Chair  
Minnesota Environmental Quality Board  
658 Cedar Street  
Suite 300  
Saint Paul, Minnesota 55155

**Re: Marion Road Trunk Sanitary Sewer Project AUAR Update #1 and Mitigation Plan  
Withdrawal of Objection**

Dear Chair Hugoson:

The City of Rochester prepared an Alternative Urban Areawide Review Update (AUAR Update) for the proposed Marion Road project. On February 23, 2009 the DNR objected to the Final AUAR Supplement and its adoption pursuant to Minnesota Rules Part 4410.361, subpart 5.D.

The DNR is responsible for managing rare species including the wood turtle, a state-listed Threatened species, as outlined in the attached objection letter. Our major concerns were potential loss of wood turtle habitat, loss of access to existing potential habitat in the vicinity of Badger Run Creek, Bear Creek and Kepp Park, and lack of specific mitigation for unavoidable losses.

In response to DNR's objection, the City developed alternative mitigation options including consultation with DNR, restoration including tree and brush removal in a 3.25 acre area of Kepp Park to establish wood turtle nesting habitat, retention of wooded areas along riparian corridors and in Kepp Park and construction of a 4-foot high chain link fence along the south side of the proposed 20<sup>th</sup> Street SE extension.

The DNR accepts the RGU's response and withdraws its objection to the Final AUAR Update. We appreciate the City of Rochester's willingness to meet with us and revise the mitigation plan to better achieve natural resource protection objectives for the wood turtle population in this area.



Mr. Gene Hugoson

September 1, 2009

Page 2

We appreciate the Board's assistance during this process. Please contact me with any questions regarding this letter.

Sincerely,



Steven Colvin

Environmental review Supervisor

Division of Ecological Resources

(651) 259-5082

Attachment

- c: Steven Hirsch, DNR Ecological Resources Director
- Joe Kurcinka, DNR Central Region Director
- Jan Wolff, DNR Ecological Resources Acting Regional Manager
- Jaime Edwards, DNR Regional Nongame Specialist
- Gregg Downing, EQB Director of Environmental Review
- Barbara Huberty, City of Rochester Public Works Department